No. 79-917

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1979

EDWARD RAYMOND LECOMPTE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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Petitioner contends that the court of appeals applied an improper "slight evidence" standard in reviewing his conviction.

1. After a jury trial in the United States District Court for the Northern District of Georgia, petitioner was found guilty of conspiracy to conduct an interstate prostitution ring through a pattern of racketeering activity, in violation of 18 U.S.C. 1962(d).[1] After the verdict, the district court granted petitioner's motion for a judgment of acquittal on the ground that the evidence

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[1]The district court granted a judgment of acquittal before verdict on three substantive counts charging petitioner with violations of 18 U.S.C. 1962(c), 1952(a)(3), 2421, and 2. Five co-defendants were convicted at trial of various offenses.

did not establish that petitioner knew that the prostitution ring with which he was associated involved interstate travel (Pet. App. xii-xviii).[2] On appeal by the government, the court of appeals reversed the judgment of acquittal and remanded the case to the district court (Pet. App. i-xi). *United States* v. *Clemones*, 577 F. 2d 1247, modified, 582 F. 2d 1373 (1978). Petitioner was then sentenced to four years' imprisonment. He appealed, and the court of appeals affirmed (Pet. App. xix-xxi).

The evidence at trial is set forth in the first opinion of the court of appeals (Pet. App. x). Briefly, it showed that for several years petitioner and others conspired to operate a multi-state prostitution enterprise in Georgia, Tennessee, North Carolina, Alabama, and Virginia. The women, several of whom were young teenagers, were forced, at times by physical mistreatment and threats, to work for the pimps in the organization, and, as prostitutes, were often "sold" by one pimp to another. The pimps operated out of brothels, apartment houses, massage parlors, hotels, and truck stops, moving their prostitutes around from place to place for short stints of activity.

Petitioner ran the Big Rig Truck Stop near Newport, Tennessee (Tr. 621-624). Three prostitutes in the enterprise who worked for co-conspirator William Alonzo Johnson, Jr., testified that in the course of their compelled activities they each worked for about two weeks at petitioner's truck stop and, while working there,

[2]The order, as reproduced in the Appendix, is erroneously shown as being dated September 17, 1979 (Pet. App. xviii). It was in fact entered on October 1, 1976.

shared their earnings with petitioner (Tr. 621-624, 912-915, 969-970). They worked in various other locations as well, in North Carolina, Virginia, Georgia, and Florida (Tr. 619-620, 916-919, 991-996).

2. In reversing the judgment of acquittal on the government's appeal, the court of appeals rejected the trial court's finding that the government failed to prove that petitioner knew that the conspiracy in which he participated was part of a broader interstate enterprise. The court summarized the evidence against petitioner and concluded (Pet. App. x):

> With respect to [petitioner] the jury could infer that [he] knew that the essential nature of the conspiracy embraced a pattern of travel in interstate commerce by persons intending to advance [his] unlawful business enterprise through the commission of acts specified in 18 U.S.C. § 1961 and embraced the division of the earnings of the prostitutes who had been sent or brought in. The jury was entitled to reject inferences that [petitioner] carried on a local enterprise and had no knowledge that the conspiracy into which [he] entered as [a] participant[ ] involved interstate travel. The trial court erred in granting the motion[ ] for judgment[ ] of acquittal * * *.

The original court of appeals opinion stated: "Once the existence of a conspiracy is shown only slight evidence is required to warrant submitting to the jury the question of a particular defendant's membership" (Pet. App. ix). That sentence was deleted when the court subsequently modified its opinion (Pet. App. xi). Petitioner contends that the use of the "slight evidence" test to sustain his conviction is unconstitutional and

contends that the circuits are in disagreement on this validity of the "slight evidence" test.[3]

Contrary to petitioner's contention, however, the court of appeals did not apply the "slight evidence" test in petitioner's case. Rather, it applied a reasonable doubt standard, stating preliminarily that "[w]e must decide whether the evidence, viewed in the light most favorable to the government, was sufficient to support the jury's conclusions that beyond [a] reasonable doubt [petitioner] conspired to violate § 1962(c)" (Pet. App. ix). The opinion then outlined the considerable evidence, both direct and circumstantial, which supported the jury's finding beyond a reasonable doubt that petitioner was aware of and was a knowing participant in the charged conspiracy. Although the "slight evidence" reference appeared in an earlier opinion, that reference was deleted in the final opinion and was not the basis for the court's decision. This case, therefore, presents no issue concerning the validity of the "slight evidence" test.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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[3]The Fifth Circuit has rejected the slight evidence test in *United States* v. *Malatesta*, 590 F. 2d 1379 (1979) (en banc), cert. denied, No. 78-6512 (Oct. 1, 1979).

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